

Service Date: December 16, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Request of PTI)	UTILITY DIVISION
Communications For Designation as an)	
Eligible Telecommunications Carrier,)	DOCKET D96.2.18
and		
IN THE MATTER of the Request of)	
Montana Telephone Association Member)	
Companies For Designations as Eligible)	
Telecommunications Carriers,)	
and		
IN THE MATTER of the Request of)	
Montana Independent Telecommunications)	
Systems, Inc., On Behalf of Its Regulated)	
Members For Designations as Eligible)	
Telecommunications Carriers,)	
and		
IN THE MATTER of the Request of)	
Ronan Telephone Company For Designation)	
as an Eligible Telecommunications Carrier,)	
and		
IN THE MATTER of the Request of)	ORDER NO. 6005a
Hot Springs Telephone Company For Designation)	
as an Eligible Telecommunications Carrier.)	

ORDER DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS
AND WAIVING REQUIREMENT TO PROVIDE TOLL CONTROL

Introduction and Background

1. On May 8, 1997, the Federal Communications Commission (FCC) issued its Universal Service Report and Order, CC Docket 96-45, Order No. 97-157 (Universal Service Order) implementing the amendments to the Communications Act of 1934 enacted by Congress

in the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996) (the "1996 Act"). The Universal Service Order provides that only those carriers which have been designated as "eligible telecommunications carriers" (ETCs) by a state commission shall receive federal universal service support.

2. As part of Senate Bill 89, the 1997 Montana Legislature enacted § 69-3-840, MCA, on April 22, 1997, authorizing the Commission to designate telecommunications carriers as eligible for federal universal service support in accordance with 47 U.S.C. § 254. SB 89 authorizes the Commission to make such designations for carriers such as telephone cooperatives which had been exempt from all Commission regulation prior to that date.

3. A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of 47 U.S.C. § 214(e)(1) and the regulations adopted by the FCC as an eligible telecommunications carrier for a service area designated by the state commission. The FCC defines a service area as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. This area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms (universal service support area).

4. The Montana Public Service Commission (Commission) consolidated the requests it received from Montana incumbent local exchange carriers (ILECs) for designation as ETCs in Docket D96.2.18, and issued a notice on August 29, 1997. The notice advised interested persons of the opportunity to intervene in this proceeding and requested comments on certain eligible carrier issues. The Commission's notice also advised all ILECs that they would be designated as ETCs after they had submitted to the Commission a completed self-certification

form stating that they meet the criteria required by the 1996 Act. The notice further stated that carriers could indicate on the Montana self-certification form their intent to petition for additional time to complete any necessary network upgrades if they are presently unable to meet all the criteria required by the Act. The Commission permitted an additional 30 days for LECs to request waiver of some of the criteria if they needed additional time in which to make the network upgrades. The Commission issued Order No. 6005 designating all Montana ILECs as ETCs--on an interim basis--on September 2, 1997.

5. After the Commission designated all ILECs as ETCs on an interim basis, it was notified by the Montana Telephone Association that West River Cooperative Telephone Company (West River), a South Dakota telephone cooperative with offices in Bison, South Dakota, provided services to subscribers in its Camp Crook exchange who are located in Montana and desired to continue receiving federal universal service support for these subscribers. West Rivers has filed a self-certification form with the Commission and has requested a waiver of the requirement to provided toll limitation services as it cannot now provide toll control services. TCT WEST, INC., a Wyoming telecommunications carrier, also provides service to some customers in Montana that are part of Wyoming exchanges.

Findings of Fact and Commission Decision

6. The FCC's Universal Service Order requires telecommunications carriers to provide the following services in order to be eligible for federal universal service support: (1) voice-grade access to the public switched network, (2) DMTF signaling (touchtone), (3) single-party service, (4) access to E-911 emergency service where the locality has implemented it, (5) access to operator services, (6) access to interexchange service, (7) access to

directory assistance, and (8) toll limitation for qualifying low-income customers. All incumbent LECs filed self-certification forms indicating that they provided all these services, except the toll control included in the FCC's toll limitation definition. The FCC concluded in ¶ 136 of its Universal Service Order that 47 U.S.C. § 214(e) prohibits states from imposing additional prerequisites for ETC designation.

7. A carrier that currently is unable to provide single-party service, access to enhanced 911 service, or toll limitation services may petition the Commission to receive universal service support for a designated period of time until the carrier has completed the network upgrades necessary to offer these services. If a carrier is incapable of offering one or more of these specific services, it must demonstrate to the Commission that "exceptional circumstances" exist with respect to which the carrier desires additional time to make network upgrades. *See Report and Order*, CC Docket No. 96-45, at ¶ 91. The FCC stated as follows:

92. . . . A carrier can show that exceptional circumstances exist if individualized hardship or inequity warrants a grant of additional time to comply with the general requirement that eligible carriers must provide single-party service, toll limitation service, and access to E911 when the locality has implemented E911 service and that a grant of additional time to comply with these requirements would better serve the public interest than strict adherence to the general requirement that an eligible telecommunications carrier must be able to provide these services to receive universal service support. The period during which a carrier could receive support while still completing essential upgrades should extend only as long as the relevant state commission finds that "exceptional circumstances" exist and should not extend beyond the time that the state commission deems necessary to complete network upgrades."

See also, 47 C.F.R. § 54.101(c).

8. The Commission has received requests for waivers of the toll control requirement from: the Montana Telephone Association (MTA) on behalf of Blackfoot Telephone Cooperative, Citizens Communications, Clark Fork Telecommunications, InterBel Telephone

Cooperative, Lincoln Telephone Company, Mid-Rivers Telephone Cooperative, Northern Telephone Cooperative, PTI Communications, Range Telephone Cooperative, Southern Montana Telephone Company, Three Rivers Telephone Cooperative and West River Cooperative Telephone Company; Montana Independent Telephone Systems (MITS) on behalf of Nemont Telephone Cooperative, Triangle Telephone Cooperative, Valley Telecommunications, Project Telephone Company and Central Montana Communications; Hot Springs Telephone Company (Hot Springs) and Ronan Telephone Company (RTC). Every ILEC in Montana, except U S WEST Communications, Inc. (U S WEST), seeks a waiver of the toll limitation requirement because they are unable to provide toll control -- one of the two components of toll limitation. Although U S WEST indicated on its self-certification form that it would request a waiver of the requirement to provide toll limitation, it has not done so.

9. Toll limitation is defined by the FCC to include both toll blocking and toll control. *See* 47 C.F.R. § 54.400(a)(4). All of Montana's eligible telecommunications carriers are able to provide toll blocking. Toll blocking prevents the placement of all long distance calls for which the subscriber would be charged, but does not block incoming "sent paid" toll calls. "Toll control" is defined at 47 C.F.R § 54.400(a)(3) as "a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or billing cycle." Toll control limits the toll charges a subscriber can incur during a billing period to a preset amount.

10. The FCC's rationale for including toll control in the definition of universal service is that the Joint Board on Universal Service had concluded that data supported a finding that uncontrollable toll charges were a major factor in low subscribership levels among low-income

consumers. The FCC further concluded that toll limitation should be supported by the federal universal service fund because that will help prevent subscribership levels for low-income consumers from declining, and that toll limitation services will promote access to the public switched network for low-income consumers and are therefore in the public interest. *See Report and Order*, at ¶ 82.

11. The Commission agrees with the reasoning set forth by the FCC in ¶ 82 of its Universal Service Order. For some time, toll blocking has been an option in Montana for controlling toll charges while still maintaining local exchange service. All companies that submitted self-certification forms indicate they can provide toll blocking to their subscribers. They assert that they are unable to provide toll control, however, and they raise significant concerns about the availability of the technology to provide this service.

12. FCC rules provide that a state commission, upon petition from a carrier, may grant eligible telecommunications carriers additional time to comply with the toll limitation requirement. The carrier will be permitted to receive universal service funds during the extension of time. 47 C.F.R. § 101(c).

13. We share the FCC's concern that toll limitation services be available to low-income consumers because they maximize the opportunity of those consumers to remain connected to the telecommunications network. We believe that the provision of toll blocking addresses this concern adequately at present. The FCC adopted the Joint Board's recommendation that when carriers make any switch upgrades, ETCs currently incapable of providing toll limitation services must add the capability to their switches to provide at least toll blocking in any future switch upgrades. The FCC emphasized, however, that this is not an

exception to ETCs' general obligation to provide toll limitation services, but rather a *transitional mechanism* to allow ETCs a reasonable time in which to replace existing equipment that technically prevents the provision of toll limitation services.

14. The ILECs that have petitioned for waivers of the toll limitation requirement claim that "exceptional circumstances" exist that prevent them from offering toll control because their local switches are not technically capable of providing toll control and the technology necessary to provide it is not available. They request waiver until such time as the technology to provide toll control is generally available and the Commission determines deployment of such service is cost-justified. We note that a Petition for Reconsideration of the toll control requirement is pending before the FCC.

15. MTA asserts that the local switches in use by its members and all other LECs nationwide do not currently have the capability to provide toll control service. It argues that the unavailability of this technology constitutes "exceptional circumstances" that justify a waiver of the toll control requirement. MTA further states that to provide toll control, it will be necessary for switching software and hardware vendors to develop new technology to perform the new functions that will be required and, if available at all, will be cost prohibitive. For now, MTA contends that toll blocking combined with prepaid calling cards can achieve the same result.

16. MITS also asserts that its members do not have the technical ability to provide toll control. MITS further states that in order to provide toll control there will have to be extensive revisions to its members billing systems and totally new information exchanges established with other carriers. It argues that these are "exceptional circumstances" which presently prevent the provision of toll control to subscribers.

17. RTC and Hot Springs both request a ruling or interpretation by the Commission regarding the provision of toll limitation as a required service and, in addition, whether toll blocking, toll control, or both, are required. Both companies presently provide toll blocking. The companies acknowledge that the Universal Service Order defines toll limitation as both toll blocking and toll control, but contend that a subsequent FCC Order states that the definition of toll limitation is either toll blocking or toll control, but not both. This subsequent FCC document is not an order, but rather a Second Further Notice of Proposed Rulemaking in CC Docket No. 96-45 issued on September 4, 1997, which refers to the definition in the Universal Service Order. The companies interpret ¶¶ 383-388 of the Universal Service Order as indicating that carriers need to provide only toll blocking as a minimum but sufficient form of toll limitation, or that either toll blocking or toll control is sufficient. Thus, they request a ruling that RTC and Hot Springs satisfy the toll limitation requirement, or, in the alternative, a waiver, suspension, or extension of time to comply with the toll control requirement, based on a finding of exceptional circumstances, until the technology can be implemented as part of a switch upgrade.

18. PTI Communications (PTI), a member of MTA, filed a separate application in which it contends that it meets the requirements of the Act and the rules of the FCC by providing toll blocking only. PTI's argument is similar to those made by RTC and Hot Springs. If the Commission deems that toll control must be offered as well, PTI requests a waiver of this requirement. PTI asserts that toll control is much more difficult, costly and administratively complex to provide than is toll blocking. It concedes that it is not clear from the FCC's Order whether toll blocking alone will satisfy the requirement to offer toll limitation service.

19. The Commission agrees with the carriers requesting waivers that their technical inability to provide toll control and the lack of available technology to implement toll control are "exceptional circumstances" that prevent the carriers from offering toll control. For that reason, the Commission grants a waiver of the toll control component of toll limitation for all Montana ILECs, including those who have not requested a waiver. All ETCs are required to make toll blocking available to qualifying low-income customers.

20. Montana ETCs may receive universal service support even though they do not offer toll control, but each carrier must notify the Commission at least six months prior to making network upgrades, so that the Commission can make a determination whether the waiver of toll control should be continued. As previously noted, the FCC has a motion for reconsideration before it to address the toll limitation requirement. If the FCC determines on rehearing that toll blocking alone will satisfy the toll limitation requirement, no such notifications or requests to continue a waiver of toll control will be required.

21. In the notice issued in this proceeding on August 29, 1997, the Commission made several tentative conclusions and requested comments on these conclusions. One such conclusion was that all Montana carriers, except U S WEST, are rural carriers. Another conclusion was that, at least initially, service areas for rural carriers should coincide with their existing study areas. Some Montana carriers operate in non-contiguous areas, which may constitute a barrier to entry for competitive local exchange carriers (CLECs). Both Sprint and AT&T commented that the Commission should clarify that it will permit carriers not providing service on February 8, 1996 to petition for eligibility, and that it will designate these other carriers as eligible for support in rural and high cost areas if they meet the criteria established in

the Universal Service Order. The Commission adopts these tentative conclusions, but will address issues on a case by case basis involving service areas for CLECs and changes in service areas for rural ILECs.

22. For non-rural companies, the Commission invited proposals on methods and criteria to determine non-rural service areas, including as much detail as possible to assist the Commission in identifying geographic boundaries and an explanation of how non-rural service area designation will fit into a costing methodology. Very few comments were received on this topic and we conclude that such designations should be made on a case by case basis after fully developing a record. For U S WEST, the only non-rural LEC in Montana which we have designated as an ETC, the service areas should be the existing exchange service areas. The provisions of SB 89 enacted by the 1997 Montana Legislature concerning a state universal service fund require that a service area be smaller than a wire center, but the Commission has insufficient information at this time to make such determinations. The Commission is considering cost models for purposes of universal service in a separate docket and will reconsider this designation pursuant to that docket. For now, we designate U S WEST's Montana exchange service areas as service areas for purposes of federal universal service obligations and support mechanisms.

23. MITS commented that the Commission should consider providing an operational definition of "media of general distribution" for rural service territories. It further states that for its members, the medium that would best notify all of its existing customers would be a newsletter that accompanies every monthly bill. A primary purpose of advertisement in media of general distribution is to provide information to persons who do not subscribe to the services

supported by the federal universal service fund. Therefore, we conclude that newsletters to existing subscribers are not sufficient to reach the intended audience and do not qualify as "media of general distribution" for its territories.

24. In addition to the companies that the Commission designated as ETCs on an interim basis, it has come to our attention that certain companies operating in adjacent states provide services to some Montana residents as part of exchange areas in those states. Specifically, West River provides services to Montanans in its South Dakota Camp Crook exchange, and TCT WEST, INC. with corporate offices in Basin, Wyoming provides services to some subscribers in southern Montana near the Wyoming/Montana border. Both companies have filed self-certification forms with the Commission indicating that they provide all the services required for universal service support except toll control. The Commission concludes that these companies should be designated as permanent ETCs for their Montana subscribers in addition to the Montana companies which we previously designated as ETCs on an interim basis.

25. The Commission will consider all other requests for ETC designation and determinations of service areas for purposes of federal universal service support on an individual case basis in a contested case proceeding where the record can be fully developed and decisions can be made after consideration of all relevant information.

Conclusions of Law

1. The Montana Public Service Commission has jurisdiction to designate eligible telecommunications carriers and their service areas in Montana as required by federal law. Sections 69-3-102 and 69-3-840, MCA.

2. Congress addressed universal service obligations and support in the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996), amending portions of the Communications Act of 1934, including 47 U.S.C. § 214 concerning receipt of such support. Section 214 requires state commissions to designate eligible telecommunications carriers and service areas for the purpose of determining universal service obligations and support mechanisms.

3. The Federal Communications Commission has adopted rules for federal universal service fund support for rural and high cost regions of the United States to implement the recommendations of the Federal-State Joint Board on Universal Service as required by § 254 of the 1996 Act. *See In the Matter of the Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157, CC Docket No. 96-45 (May 8, 1997). The FCC's Report and Order requires states to designate companies that presently receive universal service funding as eligible telecommunications carriers by December 31, 1997 so they may continue to receive money from the federal Universal Service Fund.

4. To receive federal universal service support, local exchange carriers must offer the services that are supported by the federal fund throughout its service area(s) and advertise the availability of such services and the charges therefor using media of general distribution. 47 U.S.C. § 214(e)(1). More than one ETC may be designated for rural service areas designated by the Commission if additional carriers meet the requirements of § 214(e)(1). In non-rural areas, the Commission must designate additional carriers if they meet such requirements.

5. The Commission's self-certification process requires all companies to certify that they meet the requirements of 47 U.S.C. § 214(e)(1) and to request a waiver for services they do

not presently provide and for which the FCC permits waiver by state commissions. The self-certification constitutes adequate proof that incumbent local exchange carriers provide the services supported by federal universal service support mechanisms.

6. Incumbent local exchange carriers operating in Montana provide the services required by the FCC except toll control, one element of toll limitation. The Commission may grant a waiver of the toll limitation requirement if "exceptional circumstances" are demonstrated by telecommunications carriers. *See Report and Order*, CC Docket No. 96-45, at ¶¶ 91-92. The lack of presently available technology to provide toll control constitutes exceptional circumstances.

Order

THEREFORE, based on the foregoing, IT IS ORDERED

1. That the telecommunications carriers providing local exchange service in Montana as listed below are designated as permanent "eligible telecommunications carriers" pursuant to 47 U.S.C. §§ 214 and 254;
2. That rural carriers are designated as ETCs for their existing study areas for purposes of federal universal service support;
3. That U S WEST is designated an ETC in each of its exchange service areas; and
4. A waiver of the requirement to provide toll control is granted to all local exchange carriers listed below until such time as they upgrade their networks.

PTI Communications
Blackfoot Telephone Cooperative
Citizens Telecommunications Company of Montana
Clark Fork Telecommunications
InterBel Telephone Cooperative

Lincoln Telephone Company
Mid-Rivers Telephone Cooperative
Northern Telephone Cooperative
Range Telephone Cooperative
Southern Montana Telephone Company
3 Rivers Telephone Cooperative
Nemont Telephone Cooperative
Triangle Telephone Cooperative Association
Project Telephone Company
Valley Telecommunications
Central Montana Communications
U S WEST Communications, Inc.
Hot Springs Telephone Company
Ronan Telephone Company
West River Cooperative Telephone Company (South Dakota)
TCT WEST, INC. (Wyoming)

5. Unless the Federal Communications Commission changes its decision concerning toll limitation, eligible telecommunications carriers must notify the Commission at least six months prior to upgrading their networks and the Commission will determine whether the waiver of toll control should continue.

The Commission will consider future applications for eligible carrier status, changes in service areas and other matters relating to eligible carrier designations on an individual case basis.

The Commission will send letters with accompanying copies of this Order to the Universal Service Administrative Company (USAC), Sheryl Todd and the Office of the Secretary at the Federal Communications Commission, notifying them of the eligible carrier designations and service areas that U S WEST is required to serve before December 31, 1997. DONE AND DATED this 10th day of December, 1997 by a vote of 5-0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.